IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 3927 of 2007
With
CIVIL APPLICATION No. 10578 of 2007
In
FIRST APPEAL No. 3927 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE A.L.DAVE
HONOURABLE MR.JUSTICE SHARAD D.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NEW INDIA ASSURANCE CO. LTD.
Versus
MANJULABEN MANILALBHAI SOLANKI AND OTHERS

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Appearance :
MR HASMUKH THAKKER for Appellant.
None for Opponents.

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CORAM : HONOURABLE MR.JUSTICE A.L.DAVE

and

HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 16/08/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE A.L.DAVE)

1. This appeal is preferred to challenge judgment and award passed by Motor Accident Claims Tribunal (Auxiliary), Vadodara on 13th June 2007 in Motor Accident Claims Petition No.275/2000, awarding compensation of Rs.5,20,000/- with interest at the rate of 7.5% and costs to the claimants from the opponents. Present appellant was opponent no.3 before the tribunal, joined as insurer of the vehicle involved in the accident, which resulted into death of Manilal Fulabhai Solanki, who was working as a driver with Jay Bhole Auto Consult Company.

1.1 Truck No.GJ-1 V-7648 was a truck on which he was working as a driver. On 11-12-1999 at about 8 p.m., he parked his truck on the left side of the road to attend to nature's call. At that time, truck No.GQD-4638 driven by opponent no.1 knocked him down and caused fatal injuries. It is the case of the claimants that the truck was being driven by opponent no.1 in rash and negligent manner, which resulted into death of the deceased Manilal Solanki on the spot. A criminal offence with Ankleshwar Police Station came to be registered vide C.R.No.I-139/1999. The dependents of the deceased (present respondents) preferred said claim application claiming Rs.15 Lacs by way of compensation.

2. We have heard learned advocate Mr.Thakker for the appellant-insurance company. According to him, the appellant does not challenge the award either on negligence aspect or on quantum aspect so far as it relates to computation of dependency and adoption of multiplier by the tribunal. Mr.Thakker submitted that the compensation awarded under head of loss to estate, loss of consortium as well as pain, shock and suffering are excessive and or unawardable. He submitted that the

appellant challenges the award only to a limited extent of Rs.2 Lacs.

2.1 Mr.Thakker submitted that the tribunal has assessed the income of the deceased to be Rs.2,500/- per month in absence of any proof and has assessed the prospective income at Rs.3,750/- per month, which is erroneous. The tribunal ought to have assessed the income of the deceased at Rs.1,667/- per month and prospective income at Rs.2,500/- per month. The dependency considered by the tribunal at Rs.2,500/- per month ought to have been Rs.1,667/- per month and, therefore, the compensation payable under head of dependency loss ought to have been Rs.3 Lacs and not Rs.4,50,000/- as awarded by the tribunal.

2.2 It is also submitted by learned advocate Mr.Thakker that no amount under head of pain, shock and suffering could have been awarded. The award under head of loss to estate ought to have been Rs.5,000/- instead of Rs.25,000/- awarded by the tribunal.

3. We find that the claimants had produced a certificate from the employer of the deceased to show that the deceased was working with the employer for five years as driver-cum-mechanic and was being paid Rs.5,500/-. Of course, claimants could not bring on record any vouchers but fact remains that witness Bhikhabhai Vitthalbhai Prajapati, the employer of the deceased, has produced the certificate showing the income and has also deposed about the same. Therefore, so far as income of the deceased is concerned, there is oral evidence of Bhikhabhai Vitthalbhai Prajapati supported by documentary evidence in the form of a certificate. However, the witness could not produce any vouchers in support of the certificate or his verbal say, but fact stood established that the deceased was in employment of that witness for five years as driver-cum-mechanic. The deceased, thus, possessed double

skills, namely, one as a driver and secondly as a mechanic. The tribunal has, however, not totally accepted the certificate and has assessed the income of the deceased to be Rs.2,500/- per month and has assessed the future rise in income at Rs.3,750/- per month. In our view, the assessment made by the tribunal cannot be considered as excessive or inflated or without basis. A man, who was in service with single employer for five years at a stretch, can be considered as a good skilled driver if not anything else. Here is a case of a person, who was not only a driver but who was aware about the mechanism of vehicle and, therefore, the tribunal was justified in assessing the income of the deceased to be Rs.2,500/- per month and future income at Rs.3,750/- per month. Against this, the appellant has not been able to show any foundation to indicate that the assessment made by the tribunal is excessive. Even if minimum wages are considered as income of the deceased then also the income assessed by the tribunal seems to be reasonable. The challenge to the income and ultimately dependency, therefore, cannot be accepted.

4. Award of compensation of Rs.15,000/- under head of pain, shock and suffering is challenged by the appellant in *toto*. It has come in evidence that the deceased died while he was being taken to hospital, however, Exh.31 inquest panchnama indicates that the dead body was lying on side of the road and oral evidence therefore ought not to have been accepted. However, we do not entertain this appeal on this ground on account of smallness of the amount.

4.1 So far as challenge to the compensation under head of loss to estate as well as loss of consortium are concerned, in our view, the amount awarded are reasonable and call for no interference.

4.2 The deceased was aged 40 years at the time of accident (Exh.35). The age of applicant no.1, his widow was 35 years. She has a longer mileage to cover without her husband who died in accident. In our view the compensation under the head of loss of consortium, love and affection is just and proper.

4.3 The compensation under head of loss to estate to the tune of Rs.25,000/- is also reasonable in facts of this case. The appeal, therefore, cannot be entertained either on account of award of compensation under head of dependency loss, loss to estate or loss of consortium on merits and the challenge to award in appeal for pain, shock and suffering has to fail on account of smallness of the amount. No other part of the award is challenged. Appeal, therefore, must fail and stand dismissed. The amount deposited with this Court shall forthwith be transmitted to the tribunal. There shall be no order on Civil Application in light of dismissal of the appeal.

(A.L.Dave, J.)

(Sharad D. Dave, J.)

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